

(2006) 04 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 15371 of 2005, W.P.M.P. No. 16796 of 2005 and
W.V.M.P. No. 1900 of 2005

Manuelmony Matriculation School

APPELLANT

Vs

The Principal Labour Court and N. Rajendran

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Constitution of India, 1950 — Article 254(2)

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 11, 2(7), 4,
6, 9

Citation : (2006) 2 CTC 723 : (2006) 2 MLJ 354 : (2006) WritLR 474

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K. Vijayan, for the Appellant; G. Krishnamurthy, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to issue a writ of declaration, declaring that the Industrial Disputes Act, 1947, is

not applicable to the private schools recognised under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by virtue of the

President assent to the said Act under Article 254(2) of the Constitution of India, which overrides the labour legislations including the Industrial

Disputes Act, 1947, as decided by the Apex Court and quash the same as without jurisdiction.

2. The brief facts as could be seen from the affidavit are that the petitioner School is a minority unaided School, governed by the provisions of the

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The second respondent was originally appointed as a Peon-cum-Messenger on

temporary basis in the petitioner school and according to the management, the

second respondent failed to attend duty regularly and committed many omissions and commissions. Therefore, he was called on 5.9.2003 by the Managing Committee of the School to explain the reasons for his lapses. The case of the petitioner management is that the second respondent abruptly left by making rude comments against the members of the Managing Committee and thereafter he never returned to the School. Further case of the petitioner is that the second respondent's employment was on temporary basis; his appointment after 17.10.2003 was not extended; and that, the second respondent did not rejoin the School and he voluntarily abandoned his services on account of his unauthorised absence. Subsequently, second respondent issued a legal notice on 16.9.2003 claiming a huge amount of salary and also claimed reinstatement before the Conciliation Officer. As the conciliation efforts failed, he preferred I.D. No. 83 of 2005 on the file of the first respondent and the same is pending. In such circumstances, this writ petition is filed for the above referred prayer.

3. While admitting the writ petition, this court granted interim stay on 4.5.2005. Aggrieved by the stay order, the second respondent filed vacate stay petition contending that due to the failure report filed by the Conciliation Officer, I.D. No. 83 of 2005 was raised, and if at all petitioner management has got any grievance it can only file an objection or raise a preliminary issue before the Labour Court and the writ petition as framed is not maintainable. The second respondent also stated that he is out of job and not even receiving any subsistence allowance and therefore the stay granted by this Court causes great hardships and prayed for vacating the interim stay.

4. When the stay petition and vacate stay petition came up for hearing, the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent consented for taking up the main writ petition itself for final hearing. Pursuant to the same, arguments in the main writ petition was heard.

5. The learned Senior Counsel appearing for the petitioner School submitted that I.D. No. 83 of 2005, pending before the first respondent is not maintainable since the petitioner School is an Unaided Recognised school. The learned Senior Counsel contended that the provisions of the Tamil

Nadu Recognised Private Schools (Regulation) Act, 1973, and the rules framed thereunder are applicable to the petitioner school and therefore

the second respondent can seek remedy only under the said act, if at all he is aggrieved. The learned Senior Counsel also submitted that the Code

of the Matriculation Schools cannot be applied as conditions of service to the Teachers and employees of the petitioner School after the enactment

of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, and the rules framed thereunder. The learned Senior Counsel placed

reliance on the decision of the Supreme Court reported in Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer and Others,

in support of his contention that the teachers in the schools cannot be termed as employees under the Labour Laws and that the teachers employed

by the educational institutions, whether the said institutions are imparting primary, secondary, graduate or postgraduate education, cannot be called

as "workmen" within the meaning of Section 2(s) of the Act. Learned Senior Counsel further submitted that imparting of education which is the

main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work.

Imparting of education is in the nature of a mission or a noble vocation. The clerical work, if any they may do, is only incidental to their principal

work of teaching.

6. The learned counsel appearing for the second respondent submitted that the second respondent is not a teaching staff and he is only a non-

teaching staff, appointed in the petitioner school and therefore the Industrial Dispute raised by the second respondent before the first respondent is

maintainable since the conciliation attempt was failed and the decision referred above has no application to the facts in this case.

7. The point in issue is whether the petitioner school is governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation)

Act, 1973, or by the Code of Matriculation Schools, framed by the Government.

8. A similar issue came up for consideration before this Court in the decision reported in 2002 WLR 688 (Tamil Nadu Matriculation and CBSE

School Teachers' Association v. State of Tamil Nadu and Ors.) wherein a specific issue was raised as to whether the provisions of the Tamil

Nadu Recognised Private Schools (Regulation) Act, 1973, will govern the service

conditions of the Teachers and other persons employed in the Matriculation Schools as against the statutory rules. A learned single Judge of this Court in paragraph 28 of the judgment held as follows

28. In the light of what is stated above, till the legislature brings a legislation for Matriculation Schools on par with Tamil Nadu Recognised Private

Schools (Regulation) Act, the Government is well within their powers to issue executive instructions in the form of Government Orders. In the light

of various clauses, particularly Clauses 17 to 23 in Chapter VI and VII of the Code of Regulations for Matriculation Schools which are more

exhaustive and which provides for service conditions of teachers and other staff, I hold that the impugned Code of Regulations for Matriculations

Schools framed by the Government of Tamil Nadu are valid; accordingly the writ petition fails and the same is dismissed. No costs.

9. The above order of the single Judge was considered by a Division Bench of this Court in the decision reported in 2004 (2) LW 205 (Sri

M.Venkata Subba Rao Matriculation Higher Secondary School Staff Association v. Sir M.Venkata Subba Rao Mat. Hr. Section School). In

paragraph 6 of the judgment, the Division Bench held as follows

6. Since an incidental question as to the applicability of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 to the school in

question was raised, we deem it proper to discuss and decide the said question at first. The Government of Tamil Nadu enacted the Tamil Nadu

recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as the ""Act"") in order to provide for the regulation of recognised private

schools in the State of Tamil Nadu. Under the said Act, a new private school shall obtain permission from the Government u/s 4 of the Act. The

procedures to be followed for obtaining permission and the grant of permission are not dealt with elaborately, as they are not required for the

disposal of this writ appeal. The grant of permission u/s 6 of the Act entitles the school for recognition u/s 11 of the Act. Only such of those

schools which has obtained permission and recognition were entitled to payment of grant u/s 14. In terms of the definition of a private school, such

of those schools established with permission and recognition are governed by the said Act. u/s 9 of the Act, a minority school need not get

permission, but shall also get recognition, as the permission under the Act is for

establishment of the school and the recognition is for the purpose of recognising the course. As already elaborated, the matriculation schools are governed by the regulations. In this context, it must be considered whether, in the absence of a specific enactment governing the matriculation schools, the provisions of the Act shall be automatically made applicable to those schools. This issue came up for consideration before P.Sathasivam, J. in the judgment in ""Tamil Nadu Matriculation and CBSE Schools Teachers" Association v. State of Tamil Nadu and Ors. 2002 W.L.R. 688 . After a detailed discussion, the learned Judge has held that in the absence of a specific provision making the Act applicable to the matriculation schools, it cannot be contended that the said Act would be applicable to the matriculation schools. The provisions of the Act is self-contained code insofar as the grant of permission and recognition to the private schools, established, administered and aided by the State Government under the Act. By the very nature of establishment of the matriculation schools without there being any aid, the Government had not thought it fit to make the provisions of the Act applicable mutatis mutandis to the matriculation schools also. Though the Government had not framed a separate enactment applicable to the matriculation schools, in view of the Regulations, we hold that the Regulations framed by the Government in the year 1978 shall alone be made applicable to the matriculation schools and not the Tamil Nadu Recognised Private Schools (Regulation) Act. We are entirely in agreement with the view of the learned single Judge in this regard.

10. The petitioner school having been granted recognition under the Code of Matriculation, the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is not applicable because in the definition to ""Private School"" as per section 2(7), it is stated that recognised by the competent authority under the Act. For proper appreciation, section 2(7) is extracted hereunder

Section 2(7) ""private school"" means a pre-primary, primary, middle or high school or higher secondary school or teacher training institution

imparting education or training, whether receiving grant from the Government or not, established and administered or maintained by any person or

body of persons, and recognised by the competent authority under this Act but

does not include a school or an institution...." Therefore, the petitioner school is governed only under the Code of Matriculation and not governed under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

11. Petitioner School, even though claims as minority school in the affidavit, there is no declaration, issued by the competent Civil Court or by the Government, is produced. Therefore, the claim of the petitioner management that it is a minority school cannot be sustained.

12. The next question to be decided is whether the second respondent, who is a non-teaching staff, can raise Industrial Dispute before the first respondent. This Court in the judgment reported in 1992 (1) LLJ 745 (MGT. S.H.C.H.School, Panruti, S.A. v. State of T.N. and Ors.) held that

a Teacher is not a workman within the meaning of the Industrial Disputes Act, 1947. The learned single Judge in the said judgment, followed the decision of the Honourable Supreme Court reported in 1989 (1) LLJ 61 (Miss. A. Sundarambal v. Government of Goa, Daman and Diu and others), wherein the Supreme Court held as under,

The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression

"workman" in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions

whether they are imparting primary, secondary, graduate or post-graduate education, cannot be called as "Workman" within the meaning of

Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or

supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates

children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of

teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High

Court for taking the view that teachers cannot be treated as "Workmen" as defined under the Act. It is not possible to accept the suggestion that

having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act

should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless.

13. In the above referred judgment of the Supreme Court it is held that the teachers in the Educational Institutions are not treated as "Workmen"

under the Industrial Disputes Act, 1947, even though the educational institutions can be treated as Industry in view of the decision in Bangalore

Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Therefore it is clear that a non-teaching staff is not a teacher and the Labour

Court's jurisdiction is not ousted by virtue of the said judgment.

14. In view of the above findings, the prayer in the writ petition cannot be entertained and consequently the writ petition is dismissed. As regards

I.D. No. 83 of 2005 is concerned, it is open to the petitioner to raise all defences, which are available as per law and it is for the first respondent to

consider the same on its own merits and in accordance with law.

15. The writ petition is dismissed. The interim stay granted on 4.5.2005 is vacated. WPMP No. 16796 of 2005 is dismissed and WVMP No.

1900 of 2005 is allowed. No costs.